

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII

901 N. 5th Street
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF

Monarch Cement
Company

Respondent

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Docket No. CAA-07-2003-0081

CONSENT AGREEMENT
AND FINAL ORDER

PRELIMINARY STATEMENT

This proceeding for the assessment of civil penalties was initiated pursuant to Section 113(d) of the Clean Air Act ("CAA"), as amended, 42 U.S.C. § 7413(d), when Complainant issued to Respondent a Complaint and Notice of Opportunity for Hearing.

The Complaint charged Respondent with violation of regulations promulgated at 40 C.F.R. Part 63, Subpart LLL, pursuant to Section 7412 of CAA, 42 U.S.C. § 7412.

The parties subsequently entered into negotiations in attempt to settle the allegations contained in said Complaint; the Consent Agreement set forth below is the result of such negotiations.

CONSENT AGREEMENT

The parties hereby agree as follows:

1. For purposes of this proceeding, Respondent admits the jurisdictional allegations of the Complaint and neither admits nor denies the allegations set forth in Count I of the Complaint.

2. In settlement of this matter Respondent agrees to conduct a Supplemental Environmental Project (SEP) wherein Respondent agrees to, at its portland cement plant in Humbolt, Kansas, (1) pave certain unpaved roads that lead

from the cement bulk loading silos to the plant exit road (which is currently paved) as set forth in Attachment 1 to this Consent Agreement and Final Order, at a cost of \$62,300, (2) complete the SEP project by December 31, 2003, (3) certify in writing to the Director, Air, RCRA and Toxics Division, EPA, Region VII, by January 9, 2004, or within ten (10) days of completion of the SEP, whichever is earlier, that the SEP has been completed, along with an accounting of the funds expended.

3. Respondent certifies that to the best of its knowledge, it is presently in compliance with the CAA regulations that are the subject of this action and Respondent further certifies that it shall remain in compliance with said statute and regulations.

4. Respondent consents to the issuance of the Order set forth below and consents to the payment of a civil penalty of Five Thousand and Five Dollars (\$5,005) as set forth therein.

5. Respondent waives its right to contest complainant's allegations above and its right to appeal the Final Order accompanying this Consent Agreement.

6. Failure to pay any portion of the civil penalty assessed herein may cause the entire proposed penalty, as amended, to become due and payable and may result in the commencement of a civil action in Federal District Court to recover such amount, together with interest thereon at the rate of 2 percent (2%) per annum.

7. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or in compliance with state or local requirements. Respondent further certifies that

Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

8. (a) Following receipt of the SEP Report described in paragraph 2 above, EPA will do one of the following: (i) accept the SEP Report; (ii) reject the SEP Report and notify the Respondent, in writing, of deficiencies; or (iii) reject the SEP Report and seek stipulated penalties in accordance with paragraph 9 herein.

(b) If EPA elects to exercise option (ii) above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional (30) days from the receipt by the EPA of the notification of objection to reach agreement. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision to Respondent. In the event that EPA and Respondent are unable to resolve any such deficiencies identified by EPA, the parties may submit the matter to the Regional Judicial Officer, EPA Region VII, for resolution. Respondent agrees to comply with any requirements imposed by EPA as a result of any such deficiency or failure to comply with the terms of this Consent Agreement and Final Order. In the event the SEP is not completed as contemplated herein, as determined by EPA, and as determined by decision of the Regional Judicial Officer, EPA Region VII, stipulated penalties shall be due and payable by Respondent to EPA in accordance with paragraph 9 herein.

9. (a) In the event that Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP described in

paragraph 1 of the Order above or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in paragraph 2 above, Respondent shall be liable for stipulate penalties according to the provisions set forth below:

(i) Except as provided in subparagraph (ii) immediately below, for a SEP which has not been completed satisfactorily pursuant to paragraph 2 above, Respondent shall pay a stipulated penalty to the United States in the amount of \$15,000.

(ii) If the SEP is not completed satisfactorily, but the Respondent: a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not pay any stipulated penalty.

(iii) If the SEP is satisfactorily completed, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay stipulated penalty to the United States in the amount of \$5,000.

(iv) If the SEP is satisfactorily completed, and the Respondent spent at least 90 percent of the amount of money required to be spent for the project, Respondent shall not pay any stipulated penalty.

(v) For failure to submit the SEP completion report required by paragraph 2 above, Respondent shall pay a stipulated penalty in the amount of \$100 for each day after the report due date in paragraph 2 above until the report is submitted.

(b) The determination of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be accomplished using the procedure set forth in paragraph 8(b) above.

(c) Stipulated penalties above shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

(d) Respondent shall pay stipulated penalties within fifteen (15) days of receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of paragraph 2 of the Order below. Interest and late charges shall be paid as stated in paragraph 10 herein.

(e) Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law not addressed in the Complaint.

10. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys fees.

FORCE MAJEURE

11. A. If any event occurs which causes or may cause delays in the achievement of any of the requirements of this Consent Agreement and Final Order, Respondent shall notify EPA in writing within at least ten (10) days of Respondent's knowledge of the actual or anticipated delay, as applicable. The notice shall describe in detail the anticipated length of delay, the precise cause of the delay, the measures taken and to be taken by Respondent to prevent or minimize the delay, and the timetables by which those measures will be implemented. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Defendant to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved, and shall constitute a waiver of Respondent's right to request an extension of its obligations under this Consent Agreement and Final Order based on such incident.

B. If the parties agree that the delay or anticipated delay in compliance with the terms of this Consent Agreement and Final Order filed herein has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate to such extension of time in writing. In the event the parties are unable to agree as to the existence of a force majeure, the parties agree that Respondent may submit the matter to the Regional Judicial Officer, EPA Region VII, for resolution.

C. The burden of proving that any delay is caused by circumstances entirely beyond the control of Respondent shall rest with Respondent. Increased costs

or expenses associated with implementation of the provisions required hereunder shall not, in any event, be a basis for changes in this Consent Agreement and Final Order or extensions of time under paragraph 11.B above.

12. This Consent Agreement and Final Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law.

13. No portion of the cost of the SEP, the civil penalty, interest or stipulated penalties paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as deductions for federal, state or local income tax purposes.

14. Each party shall bear its own costs and attorney's fees in connection with this action.

15. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.

FINAL ORDER

Pursuant to Section 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d) and upon the information contained in the Consent Agreement of the parties as set forth above, IT IS HEREBY ORDERED THAT:

1. Respondent shall conduct a SEP as set forth above and in Attachment 1 to this Consent Agreement and Final Order.

2. Within thirty (30) days of the effective date of this Order, Respondent shall pay a mitigated civil penalty of Five Thousand and Five Dollars, (\$5,005). Payment

shall be cashier's or certified check made payable to the United States Treasury, shall
bear the Docket Number for this action, and shall be remitted to:

EPA Region VII
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251

In the Matter of
Monarch Cement Company
Docket No. CAA-07-2003-0081

COMPLAINANT:
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By: Henry F. Rompage
Henry F. Rompage
Office of Regional Counsel
EPA, Region VII

RESPONDENT:
MONARCH CEMENT COMPANY

By: Roy L. Owen
Title: V. P. Operation
Date: 7/28/03

IT IS SO ORDERED. This Order shall become effective immediately.

Karina Borromeo 9/24/03
Karina Borromeo
Regional Judicial Officer
U.S. Environmental Protection
Agency - - Region VII

IN THE MATTER OF Monarch Cement Company, Respondent
Docket No. CAA-07-2003-0081

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

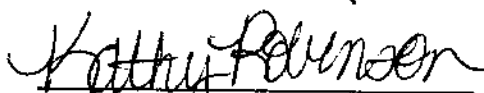
Copy hand delivered to
Attorney for Complainant:

Henry F. Rompage
Senior Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by U.S. Certified Mail,
Return Receipt Requested, to:

Terry J. Satterlee
Lathrop & Gage Law Offices
2345 Grand Boulevard
Suite 2800
Kansas City, Missouri 64108

Dated: 9/24/03



Kathy Robinson
Regional Hearing Clerk